

Appl. No. 10/633,799  
Amdt. Dated May 26, 2005  
Reply to Office Action of March 2, 2005

### REMARKS

The present application was filed with 22 original claims. Of the original claims, Claims 11-22 had been withdrawn from consideration and are now cancelled from the present application, and Claims 1-10 have been rejected under 35 U.S.C. 102(b) and (e) over cited art. Specifically, Claims 1, 3-6 and 8-10 stand rejected under 102(b) as anticipated by U.S. Patent No. 3,739,938 to Paz (hereinafter "Paz"). Claims 1-3, 6 and 7 stand rejected under 102(b) as anticipated by U.S. Patent No. 5,857,941 to Hsu (hereinafter "Hsu"). Finally, Claims 1 and 3-9 stand rejected under 102(e) as anticipated by U.S. Patent No. 6,659,302 to Lin (hereinafter "Lin").

Claim 6 has been amended to correct an inadvertent typographical error. The amendment is well-supported throughout the specification and, therefore, no new matter has been added. The remarks below address the current 102 rejections. Reconsideration of all pending claims is now respectfully requested.

#### § 102 Rejections

In order for a reference to act as a §102 bar to patentability, the reference must teach each and every element of the claimed invention. Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 771 (Fed. Cir. 1983). Without the required teaching of "each and every element" as set forth in the claims, it is improper for the Examiner to continue such rejections under §102(b).

Claims 1, 3-6 and 8-10 have been rejected as anticipated by Paz. Claim 1 is the sole independent claim under consideration, with all remaining claim dependent therefrom.

Claim 1 is directed to a beverage container and requires each of the following elements:

-a cover assembly including a cap defining a recess open to ambient;

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- an aperture in the cap spaced from the recess; and
- a drain/drink passage communicating with the recess.

The cover assembly 40 illustrated in Figures 2 and 4-6, shows cap 110 having deep recess 114 formed in one side and open to ambient (see also specification p.5, lines 13-14; p. 9, lines 15-18). The recess facilitates drinking of liquids from the beverage container by providing a position for the user's lip. A vent opening (aperture) 119 is shown spaced from the recess 114 in Figure 2, while drain/drink opening 117 is positioned within the recess 114.

Paz is directed to a non-spill cup having a top cover 12. In rejecting Claim 1 of the present application, the PTO action states that Paz discloses "a removable cover 12 having a cap defining a recess 31, an aperture 26, a drink passage 21, . . . , a vent 23, . . . ." However, Paz does not disclose a cap having a recess as set forth in Claim 1. The pocket or seat 31 of the mechanism 25, which the examiner refers to as "recess 31", bears absolutely no similarity to the recess of the cap. In fact, Paz discloses an extending spout 20 which is diametrically opposed to a recess. Further, if the pocket or seat 31 is to be considered a recess, which it is not, then the mechanism 25 must be considered the cap, as it is the cap which defines the recess (Claim 1). The examiner then identifies central plunger 26 as "aperture 26." The aperture is, of course, to facilitate fluid flow through the drain/drink opening by allowing air to be pulled into the space voided by the outflow of fluid. The central plunger is a solid mechanism which couldn't possible allow air to flow therethrough. Claim 1 also requires the aperture to be through the cap. In the case of Paz, it is not through mechanism 25 which, as explained, must be considered the cap of the cover assembly. Even accepting the examiner's mischaracterized components as disclosed by Paz, the patent still fails to teach each and every element of Claim 1.

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As claims 3-6 and 8-10 merely add further components to the base claim, they too should be considered to distinguish over the disclosure of Paz. Accordingly, the rejection of Claims 1, 3-6 and 8-10 as anticipated under 102(b) by Paz is without merit. Applicant respectfully requests reconsideration of this rejection and withdrawal of the same.

With respect to Hsu, the examiner contends the reference discloses "a removable cover 1 having a cap defining a recess 331, an aperture 32, a drink passage 33, . . ." to reject Claims 1-3, 6 and 7. Applicant traverses this rejection and requests reconsideration.

Hsu is directed to a cap assembly for a container, including a fluid conduit 33 having an open bottom end 331. The open bottom end 331 is not open to ambient as required by Claim 1. From the position of open bottom end 331 shown in Figure 1 of Hsu it would be impossible to function as the recess of Claim 1. Further, the guiding space 32 is neither an aperture through the cap of the cover assembly, nor is it spaced from the element currently mischaracterized as recess 331. The guiding space serves to house the biasing spring of the valve assembly. While Hsu does disclose an opening 11 open to ambient in cap body 1, it is not in communication with fluid passage 33.

Hsu fails to disclose a recess open to ambient defined by a cap of a cover assembly. Hsu fails to disclose a drink passage in communication with a recess open to ambient. Hsu fails to disclose an aperture passing through the cap of a cover assembly and spaced apart from a recess open to ambient. The rejection fails to identify specifically which component, if any, is being relied upon to meet the requirement of "a cap" as set forth in independent Claim 1.

As claims 2-3, 6 and 7 merely add further limitations to the base claim, they too should be considered to distinguish over the disclosure of Hsu. Particularly, Claim 7 requires "a toggle

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mechanism so that alternate actuations of the actuator mechanism respectively latch the valve assembly in its open and closed conditions.” Hsu specifically discloses:

... when the indented part 211 of the operating portion 21 of the press member 2 is pressed downwardly, the pressing portion 22 presses the top end 40 of the stem member 4 so that the stem member 4 moves downwardly to compress the biasing spring 6 and to move the valve piece 41 away from the open bottom end 331 of the fluid conduit 33, thereby permitting the fluid received in the container to be poured out through the radial outlet 330. When the operating portion 21 is released, the biasing spring 6 biases the stem member 4 upwardly so that the press member 2 returns to the original state. (Col. 3, lines 18-28)

The only way to lock the valve open is to remove the cap assembly and rotate the valve piece 41 until it is below the abutment portion 34, as shown in Figures 7 and 8. This is not the same as a toggle mechanism required by Claim 7.

Accordingly, the current rejection of Claims 1-3, 6 and 7 as anticipated under 102(b) by Hsu is without merit. Applicant respectfully requests reconsideration of this rejection and withdrawal of the same.

Finally, Claims 1 and 3-9 have been rejected as anticipated under 102(e) by Lin. The rejection contends that Lin discloses “ a removable cover 20 having a cap defining a recess 32, an aperture 24, a drink passage 28, . . . , a vent (another passage 28), and a toggle mechanism 26.” Applicant traverses this rejection and requests reconsideration.

Lin discloses a lid 20 having a recessed dome 32 positioned within the perimeter of a lip 30 and having a plurality of outlet ports 28 aligned in a circle between the dome 32 and the lip 30. The ports are contained, therefore, within the recess defined by the lip 30. However, aperture 24 also is positioned centrally within the recess. This is contrary to the requirements of Claim 1. Further, the aperture 24 of Lin contains the closing and opening valve of the lid, defeating the purpose of allowing air to flow therethrough.

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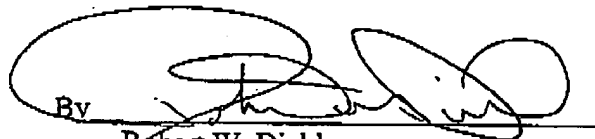
As claims 3-9 merely add further limitations to the base claim, they too should be considered to distinguish over the disclosure of Lin. Accordingly, the rejection of Claims 1 and 3-9 as anticipated under 102(e) by Lin is without merit. Applicant respectfully requests reconsideration of this rejection and withdrawal of the same.

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### CONCLUSION

Claims 1-22 were originally pending in the present application. Claims 11-22 have been cancelled as being drawn to a non-elected invention. Of the remaining claims, the current Office Action has rejected all claims under 35 U.S.C. 102. Claim 6 has been amended to correct an inadvertent typographical error. All remaining claims, as originally filed, are considered to distinguish over the cited art. The arguments set-forth in the Remarks section above clearly point out how Claims 1-10 distinguish over the cited references to Paz, Hsu and Lin. Accordingly, applicant believes all claims are now in condition for allowance. Notice to that effect is respectfully requested at the examiner's earliest convenience.

Respectfully submitted,

By 

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